



THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

DITCH, et al.

Art Unit: 3612

Examiner: Gordon

Serial No.: 09/238,510

Filing Date: January 27, 1999

For: Tie Down For Wheelchairs

#11

THIRD PETITION TO SUSPEND ACTION PURSUANT TO 37 CFR § 1.103

Honorable Director of the Patent
and Trademark Office
Washington, DC 20231

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GROUP 3600

Applicants in the above-captioned application hereby respectfully request the Director to suspend action in this application for a further period of six months for the following reasons.

The first Petition to Suspend Action was filed on November 15, 2000, and was granted for a period of six months. A second petition to suspend was filed on May 15, 2001, and was granted on May 30, 2001, for a period of six months. No Office Action is outstanding.

The parent patent, USP 5,888,038, was the subject of two actions in the United States District Court for the Western District of Michigan, Southern Division. These actions are *American Seating Company v. Transportation Seating, Inc.*, Case 1:00 CV 322 and *American Seating Company v. Freedman Seating Company and Kinedyne Corporation*, Case 1:00 CV 417. The former action is presently pending, and the latter action was terminated by entry of a consent judgment confirming the validity of the patent.

In both of these actions, defendants alleged prior invention by Richard Craft of Transportation Seating, Inc. and derivation by one or more of the inventors of the instant application. While American Seating Company, the assignee of the instant application denies these allegations, the pending District Court action is in such a posture that these issues have yet to be fully resolved.

Discovery has closed in earlier action, and further activity relating to resolution of the validity of the parent patent is on hold pending appeal of an unrelated issue or other resolution of outstanding issues including derivation and validity.

It is submitted that it would not be appropriate to proceed with the instant application until these issues are resolved because their outcomes will affect patentability of the claims herein. Accordingly, suspension of the prosecution of the instant application is appropriate.

Please charge any fee due and credit any overpayments to Deposit Account No. 50-1088.

Respectfully submitted,

CLARK & BRODY



Conrad J. Clark
Reg. No. 30,340

1750 K Street, NW, Suite 600
Washington, DC 20006
Telephone: 202-835-1111
Facsimile: 202-835-1755
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